

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JON LUKE AFFELTRANGER and  
COMPETITION & LUXURY VEHICLE  
CLUB OF DARLINGTON LLC, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

NORFOLK SOUTHERN CORPORATION;  
and NORFOLK SOUTHERN RAILWAY  
COMPANY,

Defendants.

**Case No.** \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Jon Luke Affeltranger and Competition & Luxury Vehicle Club of Darlington LLC (“C&L”) (collectively, “Plaintiffs”) bring this Class Action Complaint on behalf of themselves, and all others similarly situated, against Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “Norfolk” or “Defendants”) alleging as follows based upon information and belief and investigation of counsel, except as to the allegations specifically pertaining to them, which are based on personal knowledge:

**NATURE OF THE CASE**

1. This action arises out of the catastrophic derailment of a Norfolk train in East Palestine, Ohio, resulting in the release of toxic and carcinogenic materials into the soil, water, and air.

2. On February 3, 2023, at approximately 8:54 p.m. local time, Norfolk general merchandise freight train 32N was traveling eastbound and derailed in East Palestine, Ohio.<sup>1</sup> The derailment was the result of an overheated wheel bearing which was 253 degrees Fahrenheit hotter than the ambient air temperature.<sup>2</sup>

3. At the time of the derailment, visibility conditions were dark and clear, the weather was 10 degrees Fahrenheit, with no precipitation.<sup>3</sup>

4. Freight train 32N was more than 9,300 feet long, with a total of 149 rail cars.<sup>4</sup> The train included 20 hazardous container cars, transporting combustible liquids, flammable liquids, and flammable gas, including 115,580 gallons of vinyl chloride.<sup>5</sup> Vinyl chloride is a known human carcinogen, exposure to which is associated with the increased risk of liver, brain, and lung cancers, lymphoma, and leukemia.<sup>6</sup>

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<sup>1</sup> *NTSB Issues Investigative Update on Ohio Train Derailment*, NTSB (Feb. 14, 2023), <https://www.nts.gov/news/press-releases/Pages/NR20230214.aspx>.

<sup>2</sup> David K. Ki, Tom Costello, & Tim Stelloh, *Investigation into Ohio train derailment points to overheated wheel bearing*, NBC News (Feb. 23, 2023), <https://www.nbcnews.com/news/us-news/ntsb-set-release-preliminary-report-ohio-train-derailment-rcna71772>.

<sup>3</sup> *Norfolk Southern Railway Train Derailment with Subsequent Hazardous Material Release and Fires*, NTSB (Feb. 23, 2023), <https://assets.law360news.com/1578000/1578937/rrd23mr005%20east%20palestine%20oh%20prelim.pdf> (“Preliminary Report”).

<sup>4</sup> *Train Crew Tried to Stop Before Ohio Derailment, NTSB Says*, Law360 (Feb. 23, 2023), [https://www.law360.com/productliability/articles/1578937?nl\\_pk=9439e596-451a-4aa3-9b41-d5d304b4ab60&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=productliability&utm\\_content=2023-02-24&nlsidx=0&nlaidx=1](https://www.law360.com/productliability/articles/1578937?nl_pk=9439e596-451a-4aa3-9b41-d5d304b4ab60&utm_source=newsletter&utm_medium=email&utm_campaign=productliability&utm_content=2023-02-24&nlsidx=0&nlaidx=1).

<sup>5</sup> *Id.*

<sup>6</sup> *Vinyl Chloride*, National Cancer Institute (Nov. 3, 2022), <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/vinyl-chloride#:~:text=Vinyl%20chloride%20exposure%20is%20associated,cancers%2C%20lymphoma%2C%20and%20leukemia>.

5. As a result of the derailment, approximately 38 rail cars derailed, 11 of which were carrying flammable or combustible materials.<sup>7</sup> The 11 hazardous container cars subsequently ignited, and an ensuing fire damaged an additional 12 rail cars.<sup>8</sup>

6. The Chair of the National Transportation Safety Board (“NTSB”) called the derailment “100% preventable.”<sup>9</sup>

7. In the derailment and fire, certain chemicals combusted, causing flames and thick black smoke to billow over the town of East Palestine and the surrounding area.<sup>10</sup> First responders implemented a 1-mile evacuation zone surrounding the derailment, displacing 1,500 to 2,000 of the town’s 4,700 residents from their homes.<sup>11</sup>

8. As first responders worked to control the blaze caused by the derailment, the temperature inside one of the five rail cars carrying vinyl chloride continued to rise, indicating a polymerization reaction which could result in an explosion.<sup>12</sup>

9. Because the vinyl chloride contained in five rail cars remained unstable and could potentially explode, causing deadly disbursement of shrapnel and toxic fumes, on February 6, 2023, Ohio Governor Mike DeWine and Pennsylvania Governor Josh Shapiro ordered an immediate evacuation of a one-mile by two-mile area surrounding East Palestine, which included

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<sup>7</sup> Preliminary Report, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> Joanna Marsh, *NTSB chair says NS train derailment was ‘100% preventable’*, FreightWaves (Feb. 23, 2023), <https://www.freightwaves.com/news/ntsb-chair-says-ns-train-derailment-was-100-preventable>.

<sup>10</sup> *50-car train derailment causes big fire, evacuations in Ohio*, AP News (Feb. 4, 2023), <https://apnews.com/article/pennsylvania-ohio-evacuations-fires-5d399dc745f51ef746e22828083d591>.

<sup>11</sup> *Id.*

<sup>12</sup> Holly Yan, Christina Maxouris, & Nicki Brown, *The Ohio train wreck was ‘100% preventable’ – but there’s no evidence the crew did anything wrong, investigators say*, CNN (Feb. 23, 2023), <https://www.cnn.com/2023/02/23/us/ohio-train-derailment-east-palestine-thursday/index.html>.

parts of both Ohio and Pennsylvania.<sup>13</sup> Norfolk then conducted a “controlled” explosion of the vinyl chloride in the derailed container cars.<sup>14</sup> The explosion created a large plume of black smoke over East Palestine and the surrounding area.

10. As a result of the derailment of Norfolk’s freight train 32N, and the subsequent release of an untold amount of harmful and toxic chemicals into the surrounding areas, Plaintiffs and members of the Classes have been exposed to acute and chronic toxic materials that pose a danger to human health; have suffered rashes, headaches, and nausea; and have had their properties invaded and contaminated by plumes of dangerous chemical smoke and other toxic materials.

11. The derailment and subsequent displacement of the East Palestine community and surrounding areas has also interfered with the use and enjoyment of Plaintiffs and Class Members’ properties and led to significant emotional distress.

12. As set forth herein, the derailment of freight train 32N was the direct and proximate result of Norfolk’s failure to exercise due care and, following the derailment, to effectively and adequately contain the highly toxic materials its train was transporting.

13. Accordingly, Plaintiffs brings this class action against Norfolk for Defendants’ negligent, reckless, intentional, and wanton misconduct that endanger the health and safety of the residents of East Palestine and the surrounding areas.

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<sup>13</sup> *East Palestine Update: Evacuation Area Extended, Controlled Release of Rail Car Contents Planned for 3:30 p.m.*, Office of the Governor of Ohio (Feb. 6, 2023), <https://governor.ohio.gov/media/news-and-media/east-palestine-update-evacuation-area-extended-controlled-release-of-rail-car-contents-planned-for-3-30-pm-02062023> (“Evacuation Order”).

<sup>14</sup> *Id.*

### **PARTIES**

14. Plaintiff Jon Luke Affeltranger is a citizen of the Commonwealth of Pennsylvania and resides in Beaver County, Pennsylvania. Plaintiff is the owner of Competition & Luxury Vehicle Club of Darlington LLC.

15. Plaintiff Competition & Luxury Vehicle Club of Darlington LLC, is a limited liability company incorporated in Pennsylvania with its principal place of business at 3944 Constitution Blvd., Darlington, PA 16115.

16. Defendant Norfolk Southern Railway Company is a Virginia corporation, with its principal place of business located at 1200 Peachtree Street, NE, Atlanta, Georgia 30308.

17. Defendant Norfolk Southern Corporation is a Virginia corporation, with its principal place of business located at 1200 Peachtree Street, NE, Atlanta, Georgia 30308.

18. Upon information and belief, Defendant Norfolk Southern Railway Company is a wholly owned and operated subsidiary of Norfolk Southern Corporation.

### **JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there are 100 or more members of the proposed class, and at least one member of the proposed class is a citizen of a state different than Defendants.

20. This Court has personal jurisdiction over Defendants because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District.

21. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District.

### **STATEMENT OF FACTS**

22. Norfolk is one of the eight major railroads in the United States.

23. Norfolk's primary business is the rail transportation of raw materials, intermediate products, and finished goods across the Southeast, East, and Midwest United States.

24. Norfolk owns and operates a network of approximately 19,500 miles of railroad tracks east of the Mississippi River in 22 states and the District of Columbia.<sup>15</sup>

25. Norfolk operates 2,021 miles of railroad tracks in Ohio<sup>16</sup> and another 2,402 miles of railroad tracks in Pennsylvania.<sup>17</sup>

26. Last year, Norfolk reported record operating income of \$4.8 billion.<sup>18</sup>

27. However, despite Norfolk's profitability, the rate of accidents on Norfolk's rail lines has increased in each of the last four years.<sup>19</sup>

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<sup>15</sup> *Frequently Asked Questions*, Norfolk Southern, <http://www.nscorp.com/content/nscorp/en/about-ns/frequently-askedquestions.html#:~:text=Norfolk%20Southern%20owns%20and%20operates,and%20the%20District%20of%20Columbia> (last visited Feb. 24, 2023).

<sup>16</sup> *Norfolk Southern in Ohio*, Norfolk Southern, <http://www.nscorp.com/content/dam/nscorp/get-to-know-ns/about-ns/state-fact-sheets/oh-state-fact-sheet.pdf> (last visited Feb. 24, 2023).

<sup>17</sup> *Norfolk Southern in Pennsylvania*, Norfolk Southern, <http://nscorp.com/content/dam/nscorp/get-to-know-ns/about-ns/state-fact-sheets/pa-state-fact-sheet.pdf> (last visited Feb. 24, 2023).

<sup>18</sup> *Norfolk Southern Reports Q4 and Full-year 2022 Results*, Norfolk Southern (Jan. 25, 2023), <http://www.nscorp.com/content/nscorp/en/news/norfolk-southern-reports-q4-and-full-year-2022-results.html#:~:text=2022%20Summary,18%25%20increase%20revenue%20per%20unit>; Peter Eavis & Mark Walker, *Norfolk Southern's Profits and Accident Rates Rose in Recent Years*, N.Y. Times (Feb. 17, 2023), <https://www.nytimes.com/2023/02/17/business/energy-environment/norfolk-southern-derailment-safety.html>.

<sup>19</sup> *Q4 2022 Earnings Call*, Norfolk Southern (Jan. 25, 2022), [http://www.nscorp.com/content/dam/QuarterlyEventFiles/4q-2022/4q2022\\_all\\_presentation.pdf](http://www.nscorp.com/content/dam/QuarterlyEventFiles/4q-2022/4q2022_all_presentation.pdf).

28. Further, while last year Norfolk earned more than \$4 billion and invested close to \$2 billion in its railroad, it has paid its shareholders nearly \$18 billion dollars over the past five years, “twice as much as the amount it invested in its railways and operations.”<sup>20</sup>

29. Norfolk’s corporate philosophy of profits over people led to one of the worst ecological disasters in history, one that some commentators have dubbed “Chernobyl 2.0,” invoking the devastating 1986 nuclear disaster near Pripjat, Ukraine.<sup>21</sup>

30. Norfolk has a history of serious train derailments in and around Eastern Ohio and Western Pennsylvania.

31. For example, in October 2006, a Norfolk train en route from Chicago, Illinois to Sewaren, New Jersey derailed while crossing the Beaver River railroad bridge in New Brighton, Pennsylvania.<sup>22</sup> The train was carrying eighty-three tank cars loaded with denatured ethanol, a flammable liquid.<sup>23</sup> Twenty-three of the eighty-three tank cars derailed, approximately twenty of which released 485,278 gallons of ethanol which subsequently ignited and burned for two days.<sup>24</sup> Some of the unburned ethanol released into the river and surrounding soil.<sup>25</sup> As a result of the derailment and ensuing fire, homes and businesses within a seven-block area of New Brighton were evacuated for two days.<sup>26</sup>

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<sup>20</sup> Eavis & Walker, *supra* note 18.

<sup>21</sup> Stuart A. Thompson, ‘Chernobyl 2.0’? *Ohio Train Derailment Spurs Wild Speculation*, N.Y. Times (Feb. 16, 2023), <https://www.nytimes.com/2023/02/16/technology/ohio-train-derailment-chernobyl.html>.

<sup>22</sup> *Derailment of Norfolk Southern Rail Company Train 68QB119 with Release of Hazardous Material and Fire New Brighton, Pennsylvania October 20, 2006*, NTSB (May 13, 2008), at 1, <https://railpollutionprotectionpittsburgh.files.wordpress.com/2020/10/new-brighton-derailment-report.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1, 5.

<sup>25</sup> *Id.* at 1.

<sup>26</sup> *Id.*

32. The NTSB investigated and determined that the probable cause of the derailment was Norfolk's "inadequate rail inspection and maintenance program that resulted in a rail fracture from an undetected internal defect." The NTSB recommended that Norfolk revise its "ultrasonic rail inspection procedures to eliminate exceptions to the requirement for an uninterrupted, continuous search for rail defects."<sup>27</sup>

33. In August 2018 a Norfolk train carrying fifty-seven cars, eight of which were transporting hazmat cargo, derailed near Station Square in Pittsburgh, Pennsylvania. The Federal Railroad Administration ("FRA") found "serious oversights" in Norfolk's rail line operations and inspections. Specifically, the FRA determined the probable cause of the derailment was a broken rail that Norfolk failed to detect. More concerning, however, was that the broken rail was a used "maintenance plug rail" that was manufactured in 1985 and installed in December 2017. The derailment caused significant damage to the nearby light rail system servicing Pittsburgh, including a three-week service disruption and \$1,800,000 in damage to infrastructure.

34. Unfortunately, as a result of Norfolk's poor maintenance practices and declining safety culture as it aimed for higher profit margins, it was only a matter of time before a catastrophic train derailment occurred.

**A. The Derailment and Subsequent "Controlled" Explosion.**

35. On February 3, 2023, Norfolk freight train 32N was travelling from Madison, Illinois to Conway, Pennsylvania.<sup>28</sup>

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<sup>27</sup> *Id.* at 43.

<sup>28</sup> *Ki et al, supra* note 2.



36. Norfolk's rail lines operate a wayside defect detector, or hot bearing detector ("HBD"), that transmits an audible alarm to the train crew to slow and stop the train to inspect a hot axel.<sup>29</sup> Freight train 32N passed three HBDs before derailing.<sup>30</sup>

37. At mile post 79.9, a wheel bearing from the 23rd rail car recorded a temperature of 38 degrees Fahrenheit above ambient temperature.<sup>31</sup> And when the train passed the next HBD at mile post 69.01, the bearing's recorded temperature had reached 103 degrees Fahrenheit above ambient temperature.<sup>32</sup>

38. Approximately 20 miles before East Palestine, Ohio, security footage caught one of the train cars of freight train 32N sparking in the wheel bearing and axle area. A former Norfolk train engineer who viewed the video explained: "That was a tell-tell sign 'cause there's so much pressure, so much on that bearing, it won't last long sparking that hot that much."<sup>33</sup>

39. Freight train 32N continued towards East Palestine, Ohio, a village of approximately 4,700 people that is located about 20 miles south of Youngstown, Ohio and 40 miles Northwest of Pittsburgh, Pennsylvania.<sup>34</sup>

40. As freight train 32N passed the third HBD at mile post 49.81, the wheel bearing on rail car 23 reached a temperature of 253 degrees Fahrenheit above ambient temperature.<sup>35</sup>

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<sup>29</sup> Preliminary Report, *supra* note 3.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Wheels sparking, on fire 20 miles before Ohio train derailment, security footage shows*, WHIO-TV7 (Feb. 18, 2023), <https://www.whio.com/news/local/wheels-sparking-fire-20-miles-before-ohio-train-derailment-security-footage-shows/72AWB5QYIBFM5FCOAWENV3LTOI/>.

<sup>34</sup> Craig Webb, *East Palestine sits on the eastern edge of Ohio. What to know about the town*, Akron Beacon Journal (Feb. 4, 2023), <https://www.beaconjournal.com/story/news/2023/02/15/east-palestine-on-eastern-edge-of-ohio-what-to-know-about-the-town/69907634007/>.

<sup>35</sup> Preliminary Report, *supra* note 3.

According to Norfolk's own policies, any reading above 170 degrees Fahrenheit requires the train crew to stop the train; Norfolk considers any reading over 200 degrees "critical."<sup>36</sup>

41. At approximately 8:54 p.m., more than thirty miles out from the first HBD, the crew of freight train 32N received a mechanical defect alarm. The wheel bearing on freight train 32N's rail car 23 failed, derailing the car and other rail cars along with it.<sup>37</sup>

42. All in all, 38 rail cars were derailed, including 11 hazardous container cars transporting combustible liquids, flammable liquids, and flammable gas, including 115,580 gallons of vinyl chloride.<sup>38</sup>

43. Vinyl chloride is a colorless gas with a mild, sweet odor; it is slightly soluble in water and is highly flammable.<sup>39</sup> It is a known human carcinogen, exposure to which has been linked to dizziness, drowsiness, headaches, giddiness, liver damage, and cancer.<sup>40</sup>

44. When vinyl chloride burns, it decomposes into hydrogen chloride and phosgene.<sup>41</sup> "Phosgene is highly poisonous and was used extensively during World War I as a choking agent, while hydrogen chloride is irritating and corrosive to any tissue with which it comes into contact."<sup>42</sup> Following the derailment, rail car 23's hot axel ignited a hopper car carrying plastic

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<sup>36</sup> *Id.*

<sup>37</sup> Ki et al, *supra* note 2.

<sup>38</sup> Preliminary Report, *supra* note 3.

<sup>39</sup> *Vinyl Chloride*, Environmental Protection Agency (Jan. 19, 2017), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/vinyl-chloride.pdf>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

pellets.<sup>43</sup> More broadly, the derailment led to fires on 11 derailed hazardous container cars—including five derailed DOT-105 specification tank cars<sup>44</sup>—and 12 cars that did not derail.<sup>45</sup>

45. In addition to vinyl chloride, freight train 32N was carrying at least four other chemicals—ethylene glycol monobutyl ether, ethylhexyl acrylate, isobutylene, and butyl acrylate.<sup>46</sup> In a list Norfolk provided the EPA, Norfolk confirmed the hazardous material cars carrying butyl acrylate and the ethylhexyl acrylate were breached and either all or some of the chemicals were released during the derailment and ensuing fire.<sup>47</sup>

46. Butyl acrylate is a clear liquid used to make paint, adhesives, and caulk; exposure to butyl acrylate can cause headaches, dizziness, nausea, and irritation to the nose, throat, and lungs.<sup>48</sup>

47. Norfolk did not confirm if the car carrying ethylene glycol monobutyl ether was breached.<sup>49</sup>

48. During the derailment and ensuing fire, certain of these chemicals burned, sending plumes of toxic black smoke into the air, contaminating East Palestine and the surrounding area, and thereby exposing the residents of East Palestine and those in the surrounding area to toxic chemicals.

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<sup>43</sup> Marsh, *supra* note 9.

<sup>44</sup> DOT-105 is an insulated carbon or alloy steel pressurized tank car. *See Field Guide to Tank Cars*, Ass'n of American Railroads (Aug. 1, 2022) <https://www.aar.org/wp-content/uploads/2022/08/AAR-2022-Field-Tank-Car-Guide-FINAL-08.01.2022.pdf> at 12.

<sup>45</sup> Marsh, *supra* note 9.

<sup>46</sup> Jacob Knutson, *What we know about the Ohio train derailment*, Axios (Feb. 20, 2023), <https://www.axios.com/2023/02/13/what-we-know-about-ohio-train-derailment>.

<sup>47</sup> *Id.*

<sup>48</sup> *Butyl Acrylate*, National Library of Medicine (Feb. 24, 2023), <https://pubchem.ncbi.nlm.nih.gov/compound/Butyl-acrylate>.

<sup>49</sup> Knutson, *supra* note 46.

49. As a result of the fire, first responders implemented a 1-mile evacuation zone surrounding the derailment, displacing 1,500 to 2,000 of the town's 4,700 residents from their homes.<sup>50</sup>

50. As first responders continued for days to contain the blaze caused by the derailment, the temperature in one of the derailed DOT-105 cars carrying vinyl chloride continued to rise, causing government officials to fear that the car would explode, sending shrapnel up to a mile away.<sup>51</sup> Deeming the risk of explosion too high, on February 6, 2023, Ohio Governor Mike DeWine and Pennsylvania Governor Josh Shapiro ordered an immediate evacuation of a one-mile by two-mile area surrounding East Palestine, which included parts of both Ohio and Pennsylvania.<sup>52</sup>

51. Thereafter, Norfolk intentionally punctured holes in the vinyl chloride tankers, allowing the chemical to discharge into the environment, where it was then burned off in an intentional "controlled explosion." The supposed controlled explosion caused a billowing plume of black smoke to travel across East Palestine and into Pennsylvania.<sup>53</sup>

52. The derailment fire was finally extinguished on February 8, 2023, after which the evacuation order was lifted and East Palestine residents were allowed to return to their homes and businesses.<sup>54</sup>

53. When Norfolk decided to conduct a controlled explosion of the vinyl chloride contained in the five DOT-105 tank cars, Norfolk intentionally and knowingly created chemicals

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<sup>50</sup> AP News, *supra* note 10.

<sup>51</sup> Evacuation Order, *supra* note 13.

<sup>52</sup> *Id.*

<sup>53</sup> Juliana Kim, *Ohio crews conduct a 'controlled release' of toxic chemicals from derailed train cars*, NPR (Feb. 6, 2023), <https://www.npr.org/2023/02/06/1154760911/ohio-train-derailment>.

<sup>54</sup> Becky Sullivan, *What to know about the train derailment in East Palestine, Ohio*, NPR (Feb. 16, 2023), <https://www.npr.org/2023/02/16/1157333630/east-palestine-ohio-train-derailment>.

called dioxins by burning off the vinyl chloride.<sup>55</sup> Dioxins are “white crystalline needles” that are invisible to the eyes and generally disperse and attach to soil and dust particles.<sup>56</sup> Dioxins are highly toxic and can cause cancer, reproductive and developmental problems, damage to the immune system, and can interfere with hormones.”<sup>57</sup> As put by a Carnegie Mellon University Chemistry Professor: “[v]inyl chloride is bad, dioxins are worse”<sup>58</sup> as dioxins are persistent environment pollutants that may last in the ground for 60-80 years.<sup>59</sup>

54. Upon information and belief, there was no guarantee that the five DOT-105 tank cars would have exploded. However, by conducting a controlled explosion of the vinyl chloride instead of leaving the five DOT-105 tank cars be, Norfolk knowingly and intentionally released dioxins into the air, contaminating a radius of property in a fine layer of invisible dioxin particles surrounding East Palestine and the surrounding communities. Indeed, as a result of the controlled explosion, wherever the wind blew the plume of black smoke, dioxin particles covered peoples’ homes and property, seeping into the soil and water.

55. Because dioxins are extremely persistent compounds that break down very slowly, Norfolk has contaminated the area surrounding East Palestine with highly toxic particles for years to come.

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<sup>55</sup> Brittany Peterson & Seth Borenstein, *Toxic gases connected to Ohio train derailment cause concern*, ABC News (Feb. 8, 2023), <https://abcnews.go.com/US/wireStory/explainer-toxic-gases-connected-ohio-train-derailment-96971731>.

<sup>56</sup> *Learn About Dioxin*, Environmental Protection Agency (Feb. 13, 2023), <https://www.epa.gov/dioxin/learn-about-dioxin>.

<sup>57</sup> *Id.*

<sup>58</sup> Peterson & Borenstein, *supra* note 55.

<sup>59</sup> Nhung et al, *A Review of Soil Contaminated with Dioxins and Biodegradation Technologies: Current Status and Future Prospects*, *Toxics* 2022, 10, 278, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9227754/>.

56. Since the derailment and toxic spill of chemicals, local hospitals and clinics in the East Palestine area have treated hundreds of people for a range of ailments including headaches, respiratory problems, eye irritation, rashes, and dizziness.<sup>60</sup>

57. The derailment also caused butyl acrylate and ethyl hexyl acrylate to contaminate two waterways in East Palestine—the Sulphur Run and Leslie Run—killing an estimated 3,500 fish across seven and a half miles.<sup>61</sup> The plume of contaminants reached the Ohio River, causing municipal water intakes downriver to be shut off out of concern of contamination.<sup>62</sup>

58. Norfolk knew or should have known that by intentionally conducting a “controlled” explosion of toxic chemical materials, the toxic materials would likely cause dangerous human exposures, contaminate properties, harm the ecosystem, and result in the forced evacuation of and displacement of people from their homes. Despite this, Norfolk intentionally burned its toxic chemical cargo dispersing plumes of highly toxic chemicals throughout East Palestine and the surrounding area.

59. Norfolk failed to adopt safety measures that could have limited the derailment, or the severity thereof.

60. Most freight trains in the United States, including freight train 32N, rely on air brake systems that have been described as “a Civil War-era braking system.”<sup>63</sup> In an air brake

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<sup>60</sup> Tom O’Neill, *East Palestine Makeshift Clinic Booked Solid as Resident Symptoms Persist*, Rolling Stone (Feb. 21, 2023), <https://www.rollingstone.com/politics/politics-news/east-palestine-ohio-health-clinic-1234683289/>.

<sup>61</sup> Sullivan, *supra* note 54; CW69 Atlanta, *Ohio governor drinks tap water as EPA demands Norfolk Southern manage toxic cleanup*, CBS News (Feb. 21, 2023), <https://www.cbsnews.com/atlanta/news/ohio-governor-drinks-tap-water-as-epa-demands-norfolk-southern-manage-cleanup-of-a-toxic-train-wreck/>.

<sup>62</sup> CW69 Atlanta, *supra* note 61.

<sup>63</sup> David Sirota, Julia Rock, Rebecca Burns, & Matthew Cunningham-Cook, *Rail Companies Block Safety Rules Before Ohio Derailment*, The Lever (Feb. 8, 2023), <https://www.levernews.com/rail-companies-blocked-safety-rules-before-ohio-derailment/>.

system, the air pressure that stops the engine and the rail cars must travel the full length of the train through the brake pipe, meaning a significant amount of time is needed to actually engage the brakes across the entire train.<sup>64</sup> Further because trains are akin to giant slinkies, when air brakes are applied, the back of the train can run into the front of the train, pushing cars out and causing a derailment.<sup>65</sup>

61. However, a much more effective braking system—Electronically Controlled Pneumatic brakes (“ECP brakes”)—exists. ECP brakes are specifically designed to stop rail cars at once using an electronic signal and can reduce train stopping distances by as much as 60 percent over conventional air brake systems.<sup>66</sup> As such, ECP brakes take “the energy out of the train quicker, so when a train does derail there is less energy that has to be absorbed by crushing tank cars.”<sup>67</sup> A former official at the FRA has even stated that ECP brakes would have “reduced the severity” of the freight train 32N’s derailment.<sup>68</sup>

62. Norfolk negligently failed to adopt this more effective braking system, and, indeed, Norfolk actively sought to block rules that would have required ECP brakes on trains transporting hazardous materials.<sup>69</sup>

63. Norfolk also implemented policies and procedures that allowed its train crews to ignore sensor alerts, like the HBDs here.

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Sirota et al, *supra* note 63; Julia Rock & Rebecca Burns, “*There Will Be More Derailments*”, *The Lever* (Feb. 10, 2023), <https://www.levernews.com/there-will-be-more-derailments/>.

<sup>67</sup> Sirota et al, *supra* note 63.

<sup>68</sup> *Id.*

<sup>69</sup> Rock et al, *supra* note 66.

64. While Norfolk employs HBDs along its rail lines to flag potential mechanical problems, Norfolk also allows its team monitoring these track-side sensors to instruct train crews to disregard any safety alerts the sensors may generate.<sup>70</sup>

65. Specifically, Norfolk employs a Wayside Detector Help Desk, which is responsible for monitoring data from the HBDs.<sup>71</sup> However, workers from the help desk can instruct train crews to disregard an alert when “‘information is available confirming it is safe to proceed’ and to continue no faster than 30 miles per hour to the next track-side sensor, which is often miles away. However, Norfolk’s rulebook does not specify what such information might be.”<sup>72</sup>

66. Norfolk’s policy of ignoring alerts generated by its track-side sensors has a history of leading to train derailments.<sup>73</sup> For example, in October 2022 a Norfolk train was on its way to Cleveland when a help desk employee learned that a wheel on an engine the train was towing began to heat up.<sup>74</sup> The train was initially stopped so a mechanic could diagnose the problem. While the safest course of conduct would have been to set the engine aside to be repaired, a help desk supervisor determined that the train should continue without removing the engine.<sup>75</sup> A mere four miles later, the train derailed, dumping thousands of gallons of molten

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<sup>70</sup> Topher Sanders & Dan Schwartz, *A Norfolk Southern Policy lets Officials Order Crews to Ignore Safety Alerts*, *ProPublica* (Feb. 22, 2023), <https://www.propublica.org/article/norfolk-southern-policy-safety-alerts-east-palestine-derailment>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*



paraffin wax in Sandusky, Ohio.<sup>76</sup> The cause of the derailment: a hot wheel bearing on the engine that signaled.<sup>77</sup>

67. Norfolk’s competitors do not have similar policies. Both CSX and Burlington Northern Santa Fe do not allow employees to disregard track-side sensor alerts while Canadian National does not permit anyone to instruct a train crew to continue to travel after they receive an alert “requiring them to stop the train.”<sup>78</sup>

68. Norfolk has remained silent on whether members of freight train 32N’s crew received an HBD alert before the derailment and, if they did, whether the help desk instructed them to disregard it.<sup>79</sup>

69. Additionally, in 2019, Norfolk adopted the controversial management approach called precision scheduled railroading (“PSR”), which prioritizes profits at the expense of all else.<sup>80</sup> When Norfolk announced the implementation of PSR, Norfolk told its investors that it would improve its “operating ratio—i.e., how much Norfolk spends to run a train as a percentage of how much it makes running the train—by more than five percent in two years.”<sup>81</sup> To do so,

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Michael Kaplan, *Excess size caused train to break down in days before it derailed in Ohio, employees say*, CNN (Feb. 15, 2023), <https://www.cbsnews.com/news/ohio-train-derailment-east-palestine-norfolk-southern-excess-size/>; Eric Gardner, *Norfolk Southern Boosted Shareholder Payouts 4,500%, Slashed Workforce 33% Prior to Ohio Disaster*, More Perfect Union (Feb. 16, 2023), <https://perfectunion.us/norfolk-southern-boosted-shareholder-payouts-4500-slashed-workforce-33-prior-to-ohio-disaster/>.

<sup>81</sup> Aaron Gordon, *‘32 Nasty:’ Rail Workers Say They Knew the Train That Derailed in East Palestine Was Dangerous*, VICE (Feb. 15, 2023), <https://www.vice.com/en/article/88qze4/32-nasty-rail-workers-say-they-knew-the-train-that-derailed-in-east-palestine-was-dangerous>.

Norfolk said it would slash its workforce by a minimum of 3,000 workers.<sup>82</sup> Norfolk kept its promise to its investors, eliminating over 5,000 jobs while increasing profits since 2019.<sup>83</sup>

70. Norfolk's promise to its investors nevertheless came at a cost to train safety. Norfolk cut its workforce to the barebones, asking less workers to do more in less time, leading to fewer and shorter inspections of train cars even though inspecting train cars is a largely manual process that involves visually examining the physical cars for defects.<sup>84</sup>

71. Indeed, while Norfolk used to be one of the safest railroads in the county, since its implementation of PSR, employees have reported "a dramatic personnel shortage" with "supervisors and workers [being] placed in the thankless position of either sacrificing safety in order to hit the numbers or do the responsible thing and risk getting punished."<sup>85</sup> As such, Norfolk prioritizes "on-time performance, train speed, and the duration of time trains spend in the yard" with "Safety Fourth."<sup>86</sup>

72. Norfolk's job slashing is not just limited to train maintenance, however. Three years before the derailment, Norfolk employed five specialized signalmen called "electronic leaders" who specialized in maintaining devices like HBDs in its Eastern Region North – Division B; an area of rail lines that run east-west from Mansfield, Ohio to Harrisburg

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<sup>82</sup> *Id.*

<sup>83</sup> Kaplan, *supra* note 80; Gardner, *supra* note 80.

<sup>84</sup> Gardner, *supra* note 80; Gordon, *supra* note 81.

<sup>85</sup> Aaron Gordon, 'It's Going to End up Like Boeing': How Freight Rail Is Courting Catastrophe, VICE (Mar. 22, 2021), <https://www.vice.com/en/article/3angy3/freight-rail-train-disaster-avoidable-boeing>.

<sup>86</sup> Gordon, *supra* note 81.

Pennsylvania, and north-south from Morgantown, West Virginia to Ashtabula, Ohio.<sup>87</sup> Today, Norfolk employs zero electronic leaders in its Eastern Region North – Division B.<sup>88</sup>

73. After Norfolk eliminated the specialized signalmen, Norfolk transferred the maintenance roles to signal maintainers who have little to no knowledge or training on HBDs in a likely effort to cut down on maintenance costs.<sup>89</sup> Signal maintainers generally spend their time performing government-mandated tests of equipment—and HBDs do not fall under any federal regulations—meaning that signal maintainers likely do not perform preventative maintenance on HBDs.<sup>90</sup> As Christopher Hand, director of research at the Brotherhood of Railroad Signalmen, explained: “[t]here used to be something called ‘maintenance’ and it was routinely maintaining your apparatus—not just strictly going there when you have a regulated test.”<sup>91</sup>

#### **B. Plaintiffs’ Experiences.**

74. Plaintiff Affeltranger owns and operates C&L, and sometimes resides at property within 2 miles from the trail derailment site in East Palestine, Ohio. Plaintiff was forced to evacuate t for approximately one week following the derailment. Plaintiff also owns property and typically resides within 22 miles of the train derailment site. As a result of Defendants’ negligent, reckless, intentional, and/or wonton conduct, Plaintiff’s property was blanketed in toxic particles emanating from the train derailment site. A chemical and/or burning smell remains present at his property, including within his property, even one month after the derailment and controlled explosion. As a direct result of the train derailment, fire, and

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<sup>87</sup> Rachel Premack, *Norfolk Southern Eliminated Key Maintenance Role in Derailment Region, Union Says*, FreightWaves (Feb. 16, 2023), <https://www.freightwaves.com/news/norfolk-southern-eliminated-key-maintenance-role-in-derailment-region-union-says>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

controlled explosion, Plaintiff was exposed to toxic chemicals. Plaintiff has experienced certain symptoms including but not limited to, grayish-green phlegm and persistent nausea. Plaintiff did not experience these symptoms before the train derailment and controlled explosion. Plaintiff fears for the long-term consequences to his health, property, and water supply.

75. Plaintiff C&L owns property and operates a business within 2 miles from the train derailment site in East Palestine, Ohio. C&L has been in operation at this location for over one year. Plaintiff was forced to close its business for approximately one week following the derailment. As a result of Defendants' negligent, reckless, intentional, and/or wonton conduct, C&L's business and property were blanketed in toxic particles emanating from the train derailment site. A chemical and/or burning smell remains present at its property, including within its business, even one month after the derailment and controlled explosion. As a direct result of the train derailment, fire, and controlled explosion, Plaintiff C&L was exposed to toxic chemicals. Plaintiff fears the long-term consequences to its business, property, and water supply.

### **CLASS ACTION ALLEGATIONS**

76. Plaintiffs bring this class action on behalf of themselves and all other individuals who are similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.

77. Plaintiffs brings this action on behalf of the following classes:

Medical Monitoring Class: All natural persons who resided within a 30-mile radius (the "Class Zone") of 1020 East Taggart Street, East Palestine, Ohio 44413, as of February 3, 2023;

Property Damage Class: All persons who owned or rented property within a 30-mile radius (the "Class Zone") of 1020 East Taggart Street, East Palestine, Ohio 44413, as of February 3, 2023.

78. Excluded from the Class are Defendants, their subsidiaries and affiliates, officers and directors, any entity in which Defendants have a controlling interest, the legal representative,

heirs, successors, or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

79. This proposed class definition is based on the information available to Plaintiffs at this time. Plaintiffs may modify the class definition in an amended pleading or when they move for class certification, as necessary to account for any newly learned or changed facts as the situation develops and discovery gets underway.

80. **Numerosity:** Plaintiffs are informed and believe, and thereon allege, that there are at minimum, thousands of members of the Classes described above as there were approximately 4,700 residents of East Palestine, Ohio as of February 3, 2023. Many, if not all of these individuals were exposed to harmful chemicals caused by Defendants' train derailment, or their properties or enjoyment thereof was impacted by Defendants' train derailment.

81. **Commonality:** This action involved questions of law and fact common to the Class. Such common questions include but are not limited to:

- a. Whether Defendants operated their railroad operations negligently, recklessly, or otherwise in a tortious manner;
- b. Whether Defendants owed a duty of care to Plaintiffs and the Classes;
- c. Whether Defendants' duty of care owed to Plaintiffs and the Classes obligated Defendants to refrain from causing unreasonable harm to Plaintiffs and the Classes though the exposure to unsafe and unnecessarily high levels of dangerous chemicals;
- d. Whether Defendants breached their duty to Plaintiffs and the Classes by causing the train derailment described herein and subsequent controlled explosion;

- e. Whether Defendants' breach caused Plaintiffs and members of the Classes harm to their person or property;
- f. Whether medical monitoring is available to provide early detection benefits to members of the Medical Monitoring Class; and
- g. Whether members of the Property Damage Class are entitled to damages for the interference with the use and enjoyment of their properties.

82. **Typicality:** Plaintiffs' claims are typical of the members of the Classes. The claims of the Plaintiffs and members of the Classes are based on the same legal theories and arise from the same unlawful and willful conduct. Plaintiffs reside and/or own or rent property in the Class Zone and was present when the Class Zone was blanketed with dangerous chemicals following the derailment of Defendants' train.

83. **Adequacy:** Plaintiffs are adequate representatives of the Classes because their interests do not conflict with the interests of the members of the Classes. Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of the members of the Classes and have no interests antagonistic to the members of the Classes. In addition, Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation. The claims of Plaintiffs and the members of the Classes are substantially identical as explained above.

84. **Superiority:** This class action is appropriate for certification because class proceedings are superior to other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Classes is impracticable. This proposed class action presents fewer management difficulties than individual litigation, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single

court. Class treatment will create economies of time, effort, and expense, and promote uniform decision-making.

85. **Predominance:** Common questions of law and fact predominate over any questions affecting only individual members of the Classes. Similar or identical violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. For example, Defendants' liability and the fact of damages is common to Plaintiffs and each member of the Classes. If Defendants breached their duty to Plaintiffs and members of the Classes, then Plaintiffs and each member of the Classes suffered damages by that conduct.

86. **Injunctive and Declaratory Relief:** Defendants have acted and/or refused to act on grounds that apply generally to the Class, making injunctive and/or declaratory relief appropriate with respect to the Class under Fed. Civ. P. 23 (b)(2).

87. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein.

**FIRST CAUSE OF ACTION**  
**NEGLIGENCE**  
**(On Behalf of Plaintiffs and the Medical Monitoring Class)**

88. Plaintiffs restates and realleges all preceding factual allegations above as if fully set forth herein.

89. Defendants owed a duty under common law to Plaintiffs and Class Members to exercise reasonable care in conducting their railroad operations in a manner that would not cause Plaintiffs or members of the Class injury or harm.

90. Defendants also owed Plaintiffs and members of the Class a duty to transport hazardous and toxic chemicals using reasonable care in a manner that minimized the possibility those chemicals would be released to the environment.

91. Defendants breached their duty of care by operating freight train 32N in a negligent manner, causing it to derail, and by releasing dangerous amounts of harmful chemicals including, but not limited to, vinyl chloride, into the environment and the community surrounding East Palestine, Ohio.

92. Defendants further breached their duties by failing to contain and prevent dangerous amounts of chemicals released from freight train 32N, including but not limited to, vinyl chloride, from spreading to and contaminating the surrounding environment and exposing individuals within the Class Zone.

93. As a direct and proximate result of Defendants' negligence conduct, Plaintiffs' and Class Members' properties have been contaminated by dangerous chemicals, as has the air, groundwater, and drinking water in and around East Palestine, Ohio.

94. Further, as a direct and proximate result of Defendants' negligent conduct, Plaintiffs and members of the Medial Monitoring Class were exposed to dangerous chemicals at substantial levels. Such exposure has created a significantly increased risk of serious disease and/or cancer. This increased risk makes periodic diagnostic medical examinations reasonably necessary.

95. Monitoring procedures exist and may be reasonably obtained that allow for early detection of diseases and illnesses associated with Plaintiffs' exposure. These monitoring procedures are different than those typically obtained and recommended in the absence of toxic



exposures and are reasonably necessary due to Plaintiffs' and Class Members' exposures to toxic chemicals released from Defendants' train derailment and subsequent controlled explosion.

96. As a result of Defendants' tortious conduct, Plaintiffs and members of the Class are entitled to the costs of such a monitoring regime and damages for personal injury, emotional distress, and toxic exposure in an amount to be proven at trial.

97. For the reasons set forth above, Defendants were grossly negligent, acted with reckless indifference to the health and well-being of Plaintiffs and the Class, and/or intentionally failed to take the precautions necessary to prevent foreseeable railway accidents and, in the event of such accident, to prevent massive chemical releases of the sort that occurred herein. Defendants' conduct warrants an award of punitive damages.

**SECOND CAUSE OF ACTION**  
**NEGLIGENCE**  
**(On Behalf of Plaintiffs and the Property Damage Class)**

98. Plaintiffs restate and reallege all preceding factual allegations above as if fully set forth herein.

99. Defendants owed a duty under common law to Plaintiffs and Class Members to exercise reasonable care in conducting their railroad operations in a manner that would not cause Plaintiffs or members of the Class injury or harm.

100. Defendants also owed Plaintiffs and members of the Class a duty to transport hazardous and toxic chemicals using reasonable care in a manner that minimized the possibility those chemicals would be released to the environment.

101. Defendants breached their duty of care by operating freight train 32N in a negligent manner, causing it to derail, and by releasing dangerous amounts of harmful chemicals

including, but not limited to, vinyl chloride, into the environment and the community surrounding East Palestine, Ohio.

102. Defendants further breached their duties by failing to contain and prevent dangerous amounts of chemicals released from freight train 32N, including but not limited to, vinyl chloride, from spreading to and contaminating the surrounding environment and exposing individuals within the Class Zone.

103. As a direct and proximate result of Defendants' negligence conduct, Plaintiffs' and Class Members' properties have been contaminated by dangerous chemicals, as has the air, groundwater, and drinking water in and around East Palestine, Ohio.

104. Plaintiffs and Class Members have suffered discomfort, inconvenience, loss of use and enjoyment of their properties, displacement from their homes, emotional distress, and dilution in property value.

105. As a result of injuries caused by Defendants' tortious conduct, Plaintiffs and Class Members are entitled to damages discomfort, inconvenience, loss of use and enjoyment of their properties, displacement from their homes, emotional distress, and dilution in property value in amount to be proven at trial.

106. For the reasons set forth above, Defendants were grossly negligent, acted with reckless indifference to the health and well-being of Plaintiffs and the Class, and/or intentionally failed to take the precautions necessary to prevent foreseeable railway accidents and, in the event of such accident, to prevent massive chemical releases of the sort that occurred herein.

Defendants' conduct warrants an award of punitive damages.

**THIRD CAUSE OF ACTION**  
**STRICT LIABILITY FOR ULTRAHAZARDOUS ACTIVITY**  
**(On Behalf of Plaintiffs and the Classes)**

107. Plaintiffs restate and reallege all preceding factual allegations above as if fully set forth herein.

108. The transportation of highly dangerous, combustible, and toxic chemicals is abnormally dangerous or ultrahazardous activity, for which Defendants are strictly liable.

109. Defendants' transportation of highly dangerous, combustible, and toxic chemicals using the rail cars used, was an inappropriate place in which the activity was carried out, especially given the close proximity to the populated area of East Palestine, Ohio.

110. Further, the likelihood that a great harm would occur as a result of Defendants' transportation of highly dangerous, combustible, and toxic chemicals is substantial and the risk of such harm cannot be made safe by the exercise of utmost care.

111. The value of Defendants' transportation of highly dangerous, combustible, and toxic chemicals is also outweighed by the inherently dangerous nature of the activity as it posed an unreasonable risk to the health and safety of Plaintiffs and members of the Classes.

112. As a result of Defendants' abnormally dangerous or ultrahazardous activity, Plaintiffs and members of the Classes have suffered and will continue to suffer harm to their properties and person, resulting in damages as set forth herein.

**FOURTH CAUSE OF ACTION**  
**PRIVATE NUISANCE**  
**(On Behalf of Plaintiffs and the Classes)**

113. Plaintiffs restate and reallege all preceding factual allegations above as if fully set forth herein.

114. Defendants' train derailment and resulting chemical fire has contaminated property, drinking water, and the ecosystem within the Class Zone.

115. Defendants' tortious acts have interfered with Plaintiffs' and members of the Classes' use and enjoyment of their properties, caused displacement, and caused Plaintiffs to suffer injuries, inconvenience, and emotional distress.

116. Plaintiffs and members of the Classes have suffered injuries that are different from those experienced by the public generally, including the contamination of their property and drinking water and interference with use and enjoyment of their properties.

117. Defendants' train derailment, ensuing fire, and controlled explosion created a private nuisance to those owners and renters of property within the Class Zone. This private nuisance has proximately caused the injuries described herein.

118. Defendants' negligent, reckless, and/or intentional acts and omissions were unreasonable and constitute a permanent invasion of the property rights of Plaintiffs and the Class Members.

119. As a direct and proximate result of Defendants' acts and omissions, Plaintiffs and Class Members have incurred, and will continue to incur, costs and expenses related to the contamination of their properties and drinking water, as well as the damages.

**FIFTH CAUSE OF ACTION**  
**TRESPASS**

**(On Behalf of Plaintiffs and the Property Damage Class)**

120. Plaintiffs restate and reallege all preceding factual allegations above as if fully set forth herein.

121. Defendants, though their tortious conduct alleged herein, caused dangerous chemicals to contaminate Plaintiffs' and Class Members' properties. Defendants intentionally,

knowingly, and/or negligently discharged and released highly toxic chemicals onto the properties of Plaintiffs and Class Members.

122. Plaintiffs and Class Members did not consent to the chemical contamination of their properties and Defendants knew or should have known that Plaintiffs and Class Members would not consent to the chemical contamination of their properties.

123. Defendants' intentional, knowing, and negligent discharge of highly dangerous chemicals into Plaintiffs and Class Members' properties has interfered with the rights of Plaintiffs and Class Members to use and enjoy their property and constitutes trespass. Defendants' trespass has substantially impaired Plaintiffs' and Class Members' use and enjoyment of their property and has caused Plaintiffs and Class Members discomfort, inconvenience, emotional distress, and diminution in property value.

124. As a direct and proximate result of Defendants' intentional, knowing, and negligent discharge of highly dangerous chemicals into Plaintiffs and Class Members' properties, Plaintiffs' and Members are entitled to damages, including actual, consequential, and/or nominal damages in an amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated, prays for relief as follows:

- a. For an order certifying the Classes under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representative of the Classes and Plaintiffs' attorneys as Class Counsel to represent the Classes;
- b. For an order finding in favor of Plaintiffs and the Classes on all counts asserted herein;

- c. For damages, including actual, punitive, and exemplary damages, in an amount to be determined by the trier of fact;
- d. For an award to fund a medical monitoring program, in amount to be determined by the trier of fact;
- e. For an order of restitution and all other forms of equitable monetary relief;
- f. Declaratory and injunctive relief as described herein;
- g. Awarding Plaintiffs' reasonable attorneys' fees, costs, and expenses;
- h. Awarding pre- and post-judgment interest on any amounts awarded; and
- i. Awarding such other and further relief as may be just and proper.

**JURY TRIAL DEMANDED**

A jury trial is demanded on all claims so triable.

Dated: March 3, 2023

Respectfully submitted,

/s/ Gary F. Lynch

Gary F. Lynch

Kelly K. Iverson (*pro hac vice* forthcoming)

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